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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 CITY OF ALMATY, KAZAKHSTAN,
4 et al.,

5 Plaintiffs,

6 v.

19 Civ. 2645 (AJN) (KHP)

7 FELIX SATER,
8 et al.,

9 Defendants.

Conference

New York, N.Y.
June 4, 2019
2:30 p.m.

10 Before:

11 HON. KATHARINE H. PARKER,

12 U.S. Magistrate Judge

13 APPEARANCES

14 BOIES SCHILLER FLEXNER LLP
15 Attorneys for Plaintiffs
16 BY: MATTHEW L. SCHWARTZ
17 CRAIG A. WENNER

18 TODD & LEVI LLP
19 Attorneys for Defendants Sater, Ridloff,
20 Bayrock Group, Global Habitat Solutions and RRMI-DR
21 BY: DAVID B. ROSENBERG

22 MICHAEL S. HORN
23 Attorney for Defendant Ferrari Holdings
24
25

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1 (Case called; appearances noted)

2 THE COURT: Good afternoon. We are here for an
3 initial case management conference, and you'll see that I
4 scheduled this case at the same time as the pending case that
5 the plaintiffs have against some other defendants. I do
6 believe there is some overlap in the cases so I thought it made
7 sense to schedule the cases together, and we can talk about
8 that overlap today.

9 First, I guess I'd like to hear from plaintiffs about
10 how you view the claims to overlap and also whether discovery
11 in the pending case can be used in this case.

12 MR. SCHWARTZ: Thank you, your Honor.

13 As you're aware from reviewing the complaints, there
14 is a degree of factual overlap insofar as this case and the
15 related case that you'll hear next. Both deal with moneys that
16 were stolen in Kazakhstan from our clients and laundered into
17 the United States and in some cases the exact same flow of
18 funds.

19 Your Honor has put your finger on an issue that we
20 have been discussing amongst all the parties, which is that
21 while certainly there is discovery that will be unique to this
22 case, a lot of it is not. We have spent a long time litigating
23 the other case, collecting documents, in order to prove our
24 claims and demonstrate the movement of money, and so we have
25 been discussing with all of the parties how to efficiently

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1 exchange information.

2 The impediment, which we are working through, is the
3 protective order that exists in the related case, which
4 contains a provision that the defendants have requested saying
5 that confidential discovery material can be used only in that
6 related case. And let me be clear, as I have been clear to the
7 defendants, we have absolutely honored that provision in the
8 order. We honored that and did not rely on the confidential
9 discovery material in framing our allegations in this case.
10 We, in fact, had a clean team that framed the allegations based
11 solely upon nonconfidential material in the first instance.
12 But having filed the case, we know that if we were the
13 defendants, we would ask for some of the same material and as
14 plaintiffs we would ask for some of the same material, and
15 rather than going again to third parties, some of whom are
16 overseas, we would like to capitalize on the efficiencies of
17 simply producing what we have already collected to the
18 defendants here.

19 Likewise, we suspect that the defendants in the other
20 case, to the extent that material that is produced from these
21 defendants is responsive to discovery requests to our subpoenas
22 issued in the other case, might want to receive that as a
23 supplementation under our continuing discovery obligations; for
24 example, Triadou served a subpoena on Felix seder. He produced
25 some documents, not a whole lot of documents, and it may be

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1 that those were all the documents that he has, and that would
2 be fine. But it may be that now that he's a party to the case,
3 he'll conduct a more thorough kind of review and produce
4 documents that are responsive to that subpoena, and we would
5 want to produce those in the interest of completeness.

6 And so the proposal that we've brought to everyone is
7 let's simply bring everyone under the single order and just
8 change that one provision from "this case" to "these cases" and
9 put a double caption on it. We brought that first to the
10 defendants in the other case, because they were the ones who
11 have designated the material confidential. Mr. Ablyazov had
12 not designated any material confidential.

13 THE COURT: He didn't produce any documents.

14 MR. SCHWARTZ: He did not, but he also did not
15 designate his deposition as confidential. There are things
16 that are confidential in his deposition but other parties have
17 made that designation.

18 THE COURT: OK.

19 MR. SCHWARTZ: The Khrapunovs have told us that they
20 have no objection to this proposal. Triadou is confirming with
21 their client; they have told us they'll get back to us in the
22 next two days.

23 What I would propose is, hopefully this could be
24 consent, we can come back to your Honor next week -- again,
25 hopefully with everyone's consent -- but if not, we will make

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1 the proposal that I just made and you can hear the
2 counterarguments.

3 THE COURT: OK. Now, in the proposed case management
4 conference, I see that you've discussed ESI, you've written not
5 applicable to an ESI protocol. Why is that? Do you anticipate
6 that there will be other sources of ESI than the sources you
7 tapped for the pending litigation?

8 MR. SCHWARTZ: I'll defer to Mr. Wenner on this point,
9 but I think that given the nature of the parties to this case,
10 we don't expect there to be complicated ESI issues.

11 THE COURT: OK.

12 MR. WENNER: Your Honor, that's right. If you look at
13 the complaint and the particular defendants in the Sater
14 lawsuit, it's pretty clear with regard to them what questions
15 we will have, what documents we will request. We did not
16 anticipate -- do not anticipate -- that there will be any
17 particular ESI burdens or impediments to getting and collecting
18 those documents. The production from particular plaintiffs --
19 from the defendants we don't anticipate will be voluminous.

20 THE COURT: How does the scope of the discovery
21 differ? What areas of discovery would plaintiffs be seeking
22 that weren't already covered in the pending case?

23 MR. WENNER: The background to how we got to the
24 laundering in the United States is the same. The money that
25 funded the company Northern Seas Waterage, that story is the

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1 same, that narrative.

2 The defendants in this case entered into a
3 relationship with Ilyas Khrapunov and agreed to help and
4 facilitate particular investments and particular schemes within
5 the United States. Those are the five schemes that we've laid
6 out in the complaint. The Tri-County Mall scheme your Honor
7 will remember, that's the same scheme that's at issue in the
8 main litigation. Three of the other schemes are new. So there
9 will be some discovery on these new particular schemes, but
10 otherwise the source of funding, the general money-laundering
11 scheme and the companies involved are largely the same.

12 We've seen the introduction of a handful of new
13 companies. Again, these are larger shell companies and
14 companies controlled by these particular defendants. Those
15 will be the subject of discovery.

16 THE COURT: OK. And in your belief, what is Ferrari
17 Holdings' role in this scheme as opposed to the other
18 defendants' that are named?

19 MR. WENNER: It's quite simple. They were the broker
20 or facilitated the investment in Tri-County Mall scheme. They
21 received \$1,080,000, I believe, and immediately send half of
22 that back to Daniel Ridloff, another defendant in the case, as
23 a kickback. So they received over a million dollars in illicit
24 funds, put half in their pocket and then turned around and put
25 half in Daniel Ridloff's pocket.

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1 THE COURT: You're contending that Ferrari retained
2 approximately half a million dollars of money that can be
3 traceable back to your clients.

4 MR. WENNER: Right. They were unjustly enriched by
5 the million, and they retained ultimately over 500,000.

6 THE COURT: All right. And you think you'll be able
7 to complete the depositions within a year?

8 MR. WENNER: Yes, your Honor.

9 We believe, starting discovery today with the initial
10 conference -- we've had lots of experience in the other matter;
11 we hope and do not anticipate that this case will drag on in
12 discovery for the years it has there -- we do expect to start
13 immediately with certain discovery that may involve overseas
14 defendants; for example, custodians. For example, we had the
15 opportunity to depose and obtain certain documents from people
16 overseas. The defendants in this case were not present for
17 those depositions. They may want to ask questions. They may
18 need to participate in that discovery. For example, deposition
19 of Ilyas Khrapunov; that would be, I expect, an important
20 request by the defendants in this case.

21 We would want to start immediately with our day
22 requests, start international discovery, start third-party
23 discovery of banks. All of those things we can start
24 immediately. We wouldn't be looking to depose defendants
25 immediately -- that can wait -- but we would be asking for

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1 documents from them to help frame the rest of discovery.

2 THE COURT: All right. I'd like to hear from the
3 defendants now because I see that defendants are contemplating
4 Rule 12 motions, so I want to hear the basis of those proposed
5 motions, and then I'll let plaintiffs respond to that.

6 MR. WENNER: I mean I'm happy to hand the podium over.
7 I just would like to talk for a moment about the proposed
8 discovery plan.

9 THE COURT: Sure.

10 MR. WENNER: The parties, I believe, are in agreement
11 on the dates. There were no disputes. We talked for a moment
12 about ESI.

13 THE COURT: Right.

14 MR. WENNER: We discussed these issues and proposed
15 the dates, and I think the parties are in agreement on them.
16 The question that will be posed is whether or not, and I
17 believe defendants will make a motion, to stay discovery
18 pending their dispositive motions that you just mentioned.

19 We think in this case that there would be no reason to
20 delay that. If the discovery starts today, we can start all
21 that third-party discovery, avoid the delays we had in the main
22 action, and none of that will have a direct bearing on the
23 defendants' obligations to produce documents, but their actual
24 productions and collections themselves -- for example, as we've
25 seen with Ferrari Holdings -- is very narrow and specific.

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1 There won't be a burden on them and they would need to overcome
2 and show good cause for the stay, and that would in large part
3 turn on the strength of the motions that they'll explain. And
4 if you look at the complaint in this case, it's very similar to
5 the one in the main action, and that complaint has survived ten
6 or more motions to dismiss. And in this case we don't have the
7 jurisdictional impediments. We don't have the RICO statutory
8 standing problem. Jurisdictional diversity is not in question.
9 We don't have the fraudulent conveyance. So all the complexity
10 and nuance from that federal action is not present here, and
11 it's a fairly straightforward laundering of the money that they
12 were not entitled to.

13 We'd welcome the opportunity to argue before your
14 Honor the motion to stay, but we expect they'll talk about that
15 now.

16 THE COURT: OK. Great.

17 Mr. Rosenberg, I'll hear from you first, since you're
18 representing more of the defendants.

19 MR. ROSENBERG: Yes, your Honor.

20 If your Honor would like to hear about the anticipated
21 motion to dismiss, I can address that first.

22 THE COURT: Yes.

23 MR. ROSENBERG: Your Honor, we anticipate making a
24 motion to dismiss all of the claims asserted against my
25 defendants, Mr. Sater, Mr. Ridloff, RRMI, Global Habitat

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1 Solutions and Bayrock Group.

2 The basis for the motions to dismiss will be varied
3 among their different claims. There will be failure to state a
4 claim under 12(b)(6).

5 THE COURT: Speak a little bit louder and slower.

6 MR. ROSENBERG: The basis for the motions will be
7 varied among the different causes of action. The first basis
8 will be a motion to dismiss under 12(b)(6) for failure to state
9 a claim.

10 THE COURT: Just a failure to plead sufficient facts?

11 MR. ROSENBERG: That's correct. On the face of the
12 pleading that the allegations, as pled in the complaint, do not
13 establish a claim under New York law.

14 THE COURT: Under all of the causes of action.

15 MR. ROSENBERG: That is for the unjust enrichment
16 claim, that is for the fraud claim and possibly other claims,
17 which we're currently researching.

18 In addition to failure to state a claim under New York
19 law, we will also be moving to dismiss based on the statute,
20 the claim as being barred by the applicable statutes of
21 limitation. That claim, those claims will also be, including
22 the unjust enrichment claim -- that claim will include some of
23 the other claims as well, which we're currently researching.

24 THE COURT: What do you say about the statute of
25 limitations and how far outside the statute of limitations do

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1 you think then, by how much time did plaintiffs --

2 MR. ROSENBERG: Well, the unjust enrichment claims,
3 your Honor, as you can see from the pleading, all of the
4 allegations which establish that claim occurred back in 2012
5 and 2013, according to the pleading filed by plaintiff. Unjust
6 enrichment the statute of limitations is three years, so even
7 by the face of plaintiffs' own pleading, those claims are
8 time-barred.

9 THE COURT: Have you discussed this already with
10 plaintiffs' counsel?

11 MR. ROSENBERG: We have not.

12 THE COURT: Have you looked into any tolling arguments
13 or defenses they would have to the statute of limitations?

14 MR. ROSENBERG: We know that there are issues on the
15 unjust enrichment claims, whether that statute of limitations
16 may apply to either a six-year or three-year statute. Based on
17 the underlying causes of action in this pleading we believe
18 that the three-year statute applies.

19 THE COURT: Other bases for the motion?

20 MR. ROSENBERG: Finally, there will be a motion to
21 dismiss based on a release signed by the plaintiffs in this
22 case, and that motion will be based, will be filed only on
23 behalf of defendant Felix Sater, who is the beneficiary of that
24 release.

25 THE COURT: Are you referring to the release signed in

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1 an agreement between Arcanum and plaintiff Mr. Sater?

2 MR. ROSENBERG: That's correct, your Honor.

3 THE COURT: And that's the subject of an arbitration
4 proceeding right now?

5 MR. ROSENBERG: The arbitration proceeding was
6 commenced in order to collect fees owed to Mr. Sater under a
7 recovery assistance agreement.

8 THE COURT: But isn't there a dispute as to the
9 enforceability of the release now that there's been an alleged
10 violation of the obligations under the contract?

11 MR. ROSENBERG: I'm not sure if there's a dispute
12 about the enforceability of the release. There may be a
13 dispute about the enforceability of the fees owed to Mr. Sater,
14 obviously, which is why the arbitration proceeding was
15 commenced.

16 THE COURT: Right.

17 MR. ROSENBERG: I don't believe that there's any
18 dispute about the enforceability of that release, which was
19 effective as of the date it was signed.

20 THE COURT: OK. What was the consideration for that
21 release?

22 MR. ROSENBERG: The assistance, I assume, provided by
23 Mr. Sater. I mean there is a lot of consideration for that
24 release, which is the subject of the arbitration proceeding.
25 The arbitration panel has just been appointed within the past

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1 week or two.

2 THE COURT: What's the schedule for that arbitration?

3 MR. ROSENBERG: I'm not exactly privy to the exact
4 schedule for that arbitration right now, your Honor.

5 THE COURT: OK.

6 MR. ROSENBERG: But it's really just started.

7 THE COURT: OK.

8 MR. ROSENBERG: There's been no exchange of documents.
9 The panel was just appointed.

10 THE COURT: OK. And I see that you also are
11 anticipating a motion related to disqualification of Boies
12 Schiller.

13 MR. ROSENBERG: Yes, your Honor.

14 As the pleadings and the facts disclosed in the
15 related proceeding show, Boies Schiller, as counsel for
16 plaintiffs in this action, have a longstanding relationship
17 with Mr. Sater. That relationship commenced in about 2015.
18 During that relationship Mr. Sater met with plaintiffs' counsel
19 numerous times, exchanged numerous communications with
20 plaintiffs' counsel, and I think as plaintiffs' counsel has
21 said today, many of those discussions were tied to the recovery
22 of assets against the defendants in the related proceeding and
23 touched on possibly the assets and allegations in this case as
24 well.

25 We don't know the full extent of those communications

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1 and what exactly was exchanged in those meetings. We don't
2 know what notes or memorandum or other documents might have
3 been exchanged between the parties. We don't know whether
4 plaintiffs' counsel took notes, what was discussed during those
5 meetings.

6 THE COURT: Your firm wasn't in contact with Moses &
7 Singer about what was going on in those communications?

8 MR. ROSENBERG: We were not counsel to Mr. Sater in
9 the related proceeding, no.

10 THE COURT: Well, payments were made to Todd & Levi
11 LLP --

12 MR. ROSENBERG: Yes.

13 THE COURT: -- under the Litco agreement,

14 MR. ROSENBERG: Correct. Todd & Levi LLP had
15 established an escrow account for those payments under the
16 Litco agreement. That's correct.

17 THE COURT: So you established an escrow account for
18 the payment of fees under the Litco agreement but have no idea
19 why?

20 MR. ROSENBERG: I didn't say we don't have any idea
21 what happened -- what's going on in this case or with respect
22 to Litco. What I'm saying is that prior to our involvement,
23 Mr. Sater had entered into an agreement with plaintiffs'
24 counsel to provide assistance.

25 THE COURT: OK.

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1 MR. ROSENBERG: And we don't have, plaintiffs' counsel
2 may or may not have evidence.

3 THE COURT: You mean something separate from the Litco
4 agreement? Mr. Sater was providing assistance to plaintiffs
5 through the Litco agreement.

6 MR. ROSENBERG: Correct.

7 THE COURT: Is that right?

8 MR. ROSENBERG: Well, as a witness, yes.

9 THE COURT: That's what he testified to.

10 MR. ROSENBERG: Correct.

11 THE COURT: And are you saying that there was a
12 separate agreement between plaintiffs and Mr. Sater personally?

13 MR. ROSENBERG: No, I'm not saying that.

14 THE COURT: OK.

15 MR. ROSENBERG: But what I am saying is that Mr. Sater
16 did meet with plaintiffs' counsel and that the subject of those
17 meetings may be direct evidence that impacts either the claims
18 or defenses in this case.

19 THE COURT: And Mr. Wolf was also present at those
20 meetings, was he not?

21 MR. ROSENBERG: I don't know that, your Honor.
22 Standing here today, I don't know that Mr. Wolf was present at
23 those meetings or not.

24 THE COURT: And no one from your firm was present at
25 those meetings.

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1 MR. ROSENBERG: Absolutely not.

2 And your Honor, just to clarify, I'm not standing here
3 today saying that, with certainty that plaintiffs' counsel will
4 have a conflict of interest, but what I am saying is that we're
5 entitled to discovery to see what plaintiffs' counsel may have
6 in their files relating to those communications and meetings
7 with Mr. Sater. And if it turns out that that discovery shows
8 that there's a conflict of interest -- perhaps plaintiffs'
9 counsel has information or may be called to testify in a way
10 that's adverse to their own client -- then there may be a basis
11 for a motion to disqualify.

12 Again, I don't know that to be a fact, your Honor, but
13 the point is that to the extent plaintiffs' counsel is a fact
14 witness with relevant information, there may be a conflict of
15 interest.

16 THE COURT: OK. So those are the two motions you're
17 proposing.

18 MR. ROSENBERG: That's correct, your Honor.

19 THE COURT: All right. And you're also proposing a
20 stay of discovery?

21 MR. ROSENBERG: I discussed this with counsel to the
22 codefendant. I believe what we were looking for was a stay of
23 discovery only as to the parties; that we would be happy to
24 engage in any third-party discovery because that is going to be
25 extensive and may call on parties in other parts of the world

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1 but perhaps a stay of discovery only as to the parties pending
2 the motions to dismiss.

3 THE COURT: And on what basis should I grant the stay?

4 MR. ROSENBERG: Only on the basis of judicial
5 efficiency, your Honor.

6 THE COURT: Why would it be efficient if you're
7 proposing a year of discovery? My experience with the pending
8 case is that there's a lot of discovery. You're proposing 20
9 depositions per party, and the three transactions that are
10 unique to this action, I imagine, are going to involve quite a
11 lot of discovery in and of themselves from the parties.

12 Also, why would I stay party discovery and impose a
13 burden on nonparties? Parties have an obligation to get
14 discovery from each other before imposing discovery on another
15 party.

16 MR. ROSENBERG: I believe there was a concern that
17 possibly some of these parties may be dismissed as a result of
18 a motion to dismiss earlier than others, and obviously that's
19 pending the filings of the motions both on behalf of my
20 clients, plaintiffs and my clients and as well the
21 codefendants.

22 THE COURT: Which of the parties you're representing
23 do you believe have the strongest motion to dismiss, or
24 alternatively, do you believe all of them have equal strength?

25 MR. ROSENBERG: I believe they all have equal

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1 strength, your Honor.

2 THE COURT: All right.

3 MR. ROSENBERG: I believe that Mr. Ridloff and RRMI
4 truly have no place in this proceeding and that their motions,
5 perhaps, may be stronger on the failure to state a claim
6 motion, and obviously as to the statute of limitations motion,
7 those apply equally to all of the defendants.

8 THE COURT: Is your client, Mr. Sater, adverse to the
9 Khrapunovs and to plaintiffs here? As I understand it, you're
10 denying the material allegations.

11 MR. ROSENBERG: Of course.

12 THE COURT: And you're denying that Mr. Sater had
13 anything to do with any money laundering. Is that right?

14 MR. ROSENBERG: That's correct, your Honor.

15 THE COURT: OK. But you're not denying that he worked
16 with Ilyas Khrapunov in connection with some of these
17 transactions, for example, the Tri-County Mall, right?

18 MR. ROSENBERG: I'm not denying that Mr. Sater was
19 involved in the Tri-County Mall project site, your Honor.

20 THE COURT: Good.

21 MR. ROSENBERG: As to the allegations concerning money
22 laundering or fraud or unjust enrichment, all of those claims
23 we obviously deny.

24 THE COURT: But your client was providing material
25 help to plaintiffs in their suit against Ilyas Khrapunov, was

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1 he not?

2 MR. ROSENBERG: He was, your Honor, as part of the
3 assistance agreement.

4 THE COURT: OK. Are there any other issues that you'd
5 like to raise right now?

6 MR. ROSENBERG: Not today, your Honor.

7 THE COURT: OK. Very good.

8 Mr. Horn, I'll hear from you next.

9 MR. HORN: Your Honor, there's certainly a detailed
10 complaint here; no question about that. A lot of facts in the
11 complaint; no question about that. But when you look
12 specifically at the allegations as to my client, Ferrari
13 Holdings, it's scant. There's not much there, because there
14 couldn't be much there.

15 The allegations are that my client, Ferrari Holdings,
16 brokered a debt, a debt mortgage deal, trying to find the
17 highest bidder; nothing unusual about that. Brokered this
18 deal, received money from an attorney escrow account at the
19 closing; nothing unusual about that. Took commission and split
20 it; nothing unusual about that. People have bought homes.
21 They see how commissions are split. It's not unusual in an
22 industry where you receive a commission to split it with
23 somebody else.

24 So the reality of the situation here is that when
25 looking at the complaint as to my client alone, there's just

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1 not sufficient facts to support a finding that my client had
2 any intention, let alone knowledge, or even should have known
3 that these moneys were involved in some type of a
4 money-laundering scheme or some type of a fraud, your Honor.
5 And the problem becomes how far do things like this go? How
6 far does our jurisprudence allow somebody to have a claim
7 against a party who's just involved in a business transaction
8 without any proof that there was any belief or reason to
9 believe that the moneys at issue were "tarnished," for lack of
10 a better word? And I think that this is a good case for that.

11 When you look at, also, the issue of statute of
12 limitations with respect to my client, there's a big question
13 as to -- the first is accrual. When does the statute of
14 limitations accrue in such a case? In terms of money had and
15 received, do we have a claim against even further parties that
16 received this money that may have had no knowledge? And how
17 far do we span that out?

18 Certainly the transaction that's the head of this, the
19 transaction that was the improper transaction that my client
20 was so far removed from and may have been in another country,
21 was longer than six years ago, and the question is, do we start
22 from that transaction, or do we start from when my client
23 received the money? And I think that in this particular case
24 that we start from that transaction, the initial transaction,
25 because again, based upon the allegations in the complaint,

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1 there's no reason for my client to believe that there was
2 anything improper going on here. So my client, based upon the
3 allegations in the complaint, should be seen as a party that
4 doesn't have that specific knowledge, and therefore, there's
5 not a break in that statute of limitations and then creating a
6 new accrual of statute of limitations.

7 In terms of unjust enrichment, in this particular case
8 it's a three-year statute of limitations because we're talking
9 about a monetary claim, not an equity claim, but even if it's
10 six years, money had and received has a six-year statute of
11 limitations; the question of accrual comes to mind with that.

12 In terms of the discovery and the scope of discovery,
13 it's really hard for us here to comment on that, because we
14 know that we don't know what was exchanged from the other
15 litigation. Right? So we're sitting here and we're hearing
16 about all these exchanges and how broad the scope was, but we
17 have no idea because there's a confidentiality agreement
18 between the parties, and I understand that they're honoring that,
19 and that's fine. But at this point, without seeing that
20 university, we can't comment on what in a broader sense would
21 be needed other than specific to our client because if
22 discovery's not stayed and my client has to participate in
23 discovery, the discovery would also start from the initial
24 chain and then work down, because there has to be, in terms of
25 money had and received, there has to be proof that bad money

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1 flowed directly to my client, and so that chain would have to
2 be something that we would need discovery on.

3 I would hope that a substantial amount of that
4 discovery was done in the other case, but I certainly can't say
5 for certain, and plaintiffs' counsel can't even tell me because
6 of the general notions of what he said in court,
7 understandably, because there's a confidentiality order, and we
8 just had received a copy of that and a proposal in court today
9 to expand that to our litigation. Obviously I have to look at
10 it, talk to my client.

11 THE COURT: Right.

12 MR. HORN: I understand that there's another party
13 that's off doing that in the other litigation.

14 THE COURT: Was your client involved in all five of
15 the alleged schemes?

16 MR. HORN: No. It's just the mall.

17 THE COURT: Just the Tri-County Mall?

18 MR. HORN: That's my understanding, that he was just a
19 broker for that debt.

20 THE COURT: I see. So the gist of your motion is that
21 there aren't sufficient facts in the complaint indicating that
22 your CLIENT had any knowledge of alleged stolen money.

23 MR. HORN: Right. And also unjust enrichment requires
24 that, it has to be not too far removed from the initial
25 transaction. This is so far removed from the initial -- from

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1 the bad transaction that -- again, under certain cases it shows
2 that, I think that there are now --

3 THE COURT: You mean the initial transaction being the
4 fact of the money --

5 MR. HORN: The bad --

6 THE COURT: -- from plaintiffs?

7 MR. HORN: -- exactly. That it's so far removed, that
8 it should be found -- it's similar to proximate cause. Right?
9 It can't be so far removed that it's outside the scope of
10 reasonableness.

11 THE COURT: Have you discussed this issue with
12 plaintiffs' counsel, and have they indicated that there's an
13 ability to cure the alleged defect with the pleading as to this
14 issue?

15 MR. HORN: We discussed the issue of us filing a
16 motion to dismiss. I would like to have further discussions on
17 that and more particular on what we're discussing here, because
18 I would like that as well as I'd like to talk about the issue
19 of tolling the statute of limitations and where there are
20 issues that statute of limitations can be tolled in certain
21 circumstances, and rather than file my motion, get their
22 argument on tolling and then do the research on that and
23 respond, it would be much better to just understand their
24 position on tolling.

25 THE COURT: Right, because what I'm concerned about is

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1 having the parties spend a lot of time and effort on motions
2 when some of the issues could be cured by an amended pleading
3 and then perhaps the issues on the motion narrow.

4 I want to here from plaintiffs, but my thought would
5 be to perhaps give you a short period of time to discuss that
6 and then submit a proposal as to how to go forward on any
7 motion and/or amended pleading.

8 MR. HORN: Right.

9 THE COURT: That's all I have to say on that.

10 MR. HORN: In terms of unjust enrichment also one of
11 the issues is that in order for there to be unjust enrichment
12 my client would have had to not provide services. Right? My
13 client would have had to be unjustly enriched, but my client
14 provided services. My client found this person to purchase
15 this debt, and that's why they achieved -- that's why they
16 earned that money.

17 Anyway, there are certainly issues. The problem with
18 the discovery stay is that, logistically speaking, I like to
19 focus on one thing at a time unless I'm forced to do -- if
20 we're in an expedited situation, that's one thing. Seems like
21 we're not. Discovery's going to be over next year. I mean
22 we're going to have a discussion with them about the motion,
23 we're going to be briefing the motion. Maybe we'll resolve it,
24 maybe we won't. But to have our initial discovery, to have our
25 demands to be sent out and then have responses within probably

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1 the time that we're going to have that discussion, to me, it's
2 just a lot to do and it's a lot of money to expend. So we were
3 talking about, we were trying to compromise on this.

4 We recognize that plaintiffs want to go seek documents
5 outside of this jurisdiction, and we have no problem with that.
6 I have no problem with them, because third parties may not be
7 preserving records. Right? My client, once he knows about a
8 lawsuit, I'm his attorney, he's told to preserve records.
9 Right? Everybody else is, but I understand third parties may
10 not be because they don't know about this case. So I have no
11 problem with them serving a subpoena on these third parties,
12 going to the Hague, going through the Hague Convention, and
13 that takes a tremendous amount of time. But it seems to me
14 that my experience going through the Hague Convention, and
15 depends on the country, but it just takes a very long time and
16 for us to be rushing to get discovery and to resolve this
17 motion and to brief this motion all at the same time when we
18 all know that discovery outside from this country is going to
19 take a long time, and they don't need stuff from my client at
20 least, from my understanding, to serve those subpoenas.
21 They're not looking for documentation from us to serve foreign
22 subpoenas because we have nothing, and even with the
23 allegations, all the allegations, we have nothing to do with
24 anything that was foreign, outside of the country. My client
25 didn't have transactions, from my understanding, outside of

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1 this country relating to this case.

2 For that reason, even if discovery is not stayed in
3 whole, let's get a reasonable discovery schedule together,
4 taking into account the good faith efforts that we're going to
5 make to resolve the motion, the possibility of resolving
6 motions or moving forward. We could have a conference call
7 after we've made those, had those discussions, trying to
8 resolve the motion. And then if they're not resolved, we can
9 do a briefing schedule and then party discovery. I think it's
10 going to take some time for the Court to decide the motion, so
11 we can start discovery between that period of time, and if we
12 resolve the motion, we'll have a conference call, then we can
13 start right away with the party discovery. That's my
14 suggestion.

15 THE COURT: Is there a possibility that your client
16 could have an early settlement with the plaintiffs?

17 MR. HORN: There's always a possibility to try and
18 resolve a case, and I come with no preconditions and I'd be
19 happy to just have confidential settlement discussions with
20 plaintiffs in any forum if they would like. My client's
21 company is not active now, but they're paying me, so there's
22 some money, and there's a cost going forward, obviously, that
23 we'd also take into consideration.

24 THE COURT: Right, because if your client's motion
25 isn't granted, there will be a significant expense in the

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1 litigation.

2 MR. HORN: Yes.

3 THE COURT: OK. I'd like to hear from plaintiffs in
4 terms of thoughts about a discovery schedule and the proposed
5 motions.

6 MR. WENNER: Your Honor, I believe the only question
7 really now is whether to stay discovery. That's the only
8 decision that would necessarily need to be made today.

9 THE COURT: Well, no. I want to hear your view on my
10 suggestion that the parties be given a brief period of time to
11 talk about the alleged defects in the pleading and whether
12 those alleged defects could be addressed in an amended pleading
13 and the proposed motions narrowed.

14 MR. WENNER: We absolutely would not want to burden
15 the Court, would not want to burden defendants with motion
16 practice that we would cure with amended pleadings, so I don't
17 think there's any problem with engaging in that discussion with
18 them, identifying defects they may have identified, and we can
19 talk about them, if any. I don't think that's going to be a
20 problem.

21 I can say, though, that as far as showing good cause
22 for the ultimate merits of the motion to dismiss to make the
23 case go away they ultimately would be unsuccessful.

24 Taking RRMI and Ferrari just as two examples that have
25 come up here in this conference, just one transaction alone

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1 allows this case to go forward, and that's in connection with
2 the Tri-County Mall, when Ferrari was paid its finder's fee,
3 that million dollars. What establishes the fraud for notice of
4 a Rule 9 pleading is that they immediately then, the next day,
5 turn around and give half their finder's fee back to the person
6 that they purportedly found as the buyer. They gave this
7 kickback, the 50 percent of their finder's fee, the same day,
8 and that occurred on May 24, 2013 -- and this is paragraphs 203
9 to 204 in the complaint -- so that's May 2013, and our
10 complaint was filed in March 2019, within six years.

11 So apart from all questions about equitable tolling,
12 apart from all more nuanced arguments about how we get these
13 other causes of action to go forward, receiving a kickback or
14 providing a kickback, which is RRMI and Ferrari, will allow us
15 to go forward to the merits.

16 THE COURT: And what about the proposed or potential
17 disqualification motion? That's implicating privileged
18 communications, obviously.

19 MR. WENNER: It is, and if I understand from the way
20 it was described, I'm not certain that there is going to be a
21 motion to disqualify filed until they've asked for discovery,
22 we've responded, there will be privilege calls, they will get
23 some documents, communications; at that point they can make
24 that decision. But that question about disqualification
25 concerns events that happened long after the allegations in

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1 this case, going to one question about the scope of the release
2 for Litco to which Sater's not a party, and I don't intend to
3 litigate here all the issues about Litco. But needless to say
4 those events happening in 2015 will have little bearing or
5 impact on the discovery proceeding and the merits of our claims
6 here in this case, and I don't think there will be any
7 conflict-of-interest question with regard to proceeding with
8 discovery on the merits of the case, briefing these issues that
9 predated, and by Mr. Sater's own allegations, he's the one who
10 located Boies Schiller and asked them to involve themselves.
11 So we don't agree with any of Mr. Sater's characterizations
12 about Litco generally, but I think this is not something that
13 the Court needs to tee up today or concern itself with in terms
14 of proceeding to discovery about the allegations in our
15 complaint.

16 THE COURT: OK.

17 MR. HORN: Your Honor, if I may just be heard real
18 quickly?

19 THE COURT: Yes.

20 MR. HORN: Counsel had mentioned earlier that he was
21 constrained when he wrote the pleading in terms of trying to
22 abide by the confidentiality agreement. I think that we
23 should have some time where we are able to morph whatever
24 confidentiality agreement they have in the other case to our
25 case so that when we talk to plaintiffs about the sufficiency

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1 of their pleadings, he can tell me, Oh, I found this document,
2 or I have that document, and it shows your client is definitely
3 responsible, because without talking in that with everything
4 that he knows, I think that we could end up with a motion to
5 dismiss and then he somehow is able to try and amend based upon
6 some confidential records, and why go through that.

7 THE COURT: OK. This is what I'm going to do. I'm
8 going to give the parties two weeks, until June 18, to discuss
9 the overlap of discovery and the joining of the protective
10 order in the pending case, so the parties in both matters can
11 discuss that. By June 18 I'd like a letter as to what the
12 resolution of that issue is and if it's an adoption of that
13 protective order, in whole or in part, you can let me know that
14 and submit the proposed protective order. To the extent that
15 order is more extensive than what is in my individual
16 practices, I will except you from my normal rules so that you
17 don't have to reinvent the wheel.

18 I will give you then until July 3 to discuss -- I'm
19 assuming there will be agreement on the protective order and
20 that you then will be able to discuss over a two-week period,
21 and even starting before that you can start to talk about some
22 of the statute of limitations issues and some other things
23 you're not otherwise constrained to discuss, so I'll give you
24 until July 3 to talk about whether or not there needs to be an
25 amended pleading and it may be that defendants don't want an

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1 amended pleading but you elect not to move to dismiss or you
2 elect to file a partial motion, but why don't you think about
3 that and whether that even makes sense economically for your
4 clients, etc. I'll give you until July 3, and since it's a
5 holiday weekend, you can let me know on July 9 by letter what
6 the parties' plan is. Is there going to be an amended pleading
7 and then a motion? Or will there be no amended pleading and a
8 motion on the existing pleading? And I'd like then a proposed
9 briefing schedule for that motion. OK?

10 Right now I'm not going to stay discovery. I'm going
11 to adopt the outside deadline of June 4, 2020, and I'm going to
12 wait until I see the various correspondence before determining
13 whether or not any kind of stay is warranted.

14 In the meantime, I'll ask that you prepare your
15 initial disclosures and to provide those initial disclosures by
16 July 9. To the extent there is nonparty discovery that is not
17 redundant, you couldn't get from a party, you can commence that
18 discovery.

19 I also would like the parties to think about document
20 requests -- not interrogatories, document requests -- and to
21 serve those July 9 as well, because I'd like each side to tee
22 up the issues of what are the documents that you would be
23 seeking in this action. And I want to emphasize Rule 34 and
24 Rule 1 so that you are specific in your requests. Do not ask
25 for any and all documents. That is going to raise disputes, so

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1 I don't expect to see any document requests or "any and all,"
2 and objections need to be specific, meaning if something is
3 vague, you need to specify why it is vague, what about it is
4 vague. If the time period is overbroad, you need to explain
5 what is the time period that is not overbroad. So I expect you
6 to be very specific in your requests and responses and to meet
7 and confer in good faith.

8 And remember, discovery is an iterative process, so
9 that why don't you start specific and then you will have a
10 chance to serve additional document requests that increase the
11 scope. I want you to first start with very specific document
12 requests so you get an idea of what you really need in this
13 action and then you can follow up. OK?

14 I'm also going to set a conference for July 31.
15 That's a Wednesday. And we will meet at 11:30 a.m. I'll have
16 received all of the correspondence. We can talk about where we
17 are at that point, and then most likely I'll schedule monthly
18 conferences after that to make sure that the parties are on top
19 of their discovery and to minimize motion practice. OK?

20 Anything further?

21 MR. ROSENBERG: Your Honor, if I just may be heard on
22 one more issue?

23 Under the current stipulation the defendants have
24 until June 19 to answer or move. Is that date now extended
25 beyond the July 9 date that we report to the Court on our

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1 discussions regarding potential amended pleadings?

2 THE COURT: Yes. What I'll do is I'll extend right
3 now to July 9 -- actually, I'll extend it to July 31, and we
4 can talk about it at the conference to the extent needed. OK?

5 Anything else from plaintiffs?

6 MR. SCHWARTZ: One thing.

7 There is one defendant that has been served and
8 defaulted quite a while ago. We don't want to leave that loose
9 end out there, but at the same time, we don't want them popping
10 up and unnecessarily spend time defaulting. Does your Honor
11 have a preference as to when we submit the default?

12 THE COURT: No. I think what you should do is submit
13 it before July 31, and I think that Judge Nathan most likely
14 will address the default motion, although she may refer that to
15 me for an inquest.

16 Anything further?

17 MR. HORN: No, your Honor.

18 THE COURT: Then we're adjourned, and we'll hear the
19 next City of Almaty case.

20 Why don't the parties come on up.

21 (Adjourned)

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